



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2005

Ms. Cynthia Villarreal-Reyna  
Agency Counsel Section Chief  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714

OR2005-01946

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219556.

The Texas Department of Insurance (the "department") received a request for any information received by the department from Progressive County Mutual Insurance ("Progressive") in response to a consumer complaint filed by the requestor. The department takes no position with regard to the public availability of the requested information. You believe, however, that this request for information implicates the proprietary interests of Progressive. You state, and provide documentation showing, that you notified Progressive of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered Progressive's arguments and reviewed the submitted information.

Progressive claims that the submitted information constitutes a communication from a consulting expert which is excepted from disclosure pursuant to section 552.101 in conjunction with Rule 192.3(e) of the Texas Rules of Civil Procedure.<sup>1</sup> We note that this office generally does not address discovery and evidentiary rules that may or may not be applicable to information submitted to our office by a governmental body. *See* Open Records

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<sup>1</sup> Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Act). However, the Texas Supreme Court has ruled that the Texas Rules of Civil Procedure and the Texas Rules of Evidence are "other law" that make information confidential for the purposes of section 552.022. *See* Gov't Code § 552.022 (enumerates several categories of information not excepted from required disclosure unless expressly confidential under other law); *see also In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). In this instance, the submitted information does not fall into one of the categories of information made expressly public by section 552.022 of the Government Code. Therefore, the Texas Rules of Civil Procedure are not applicable. We also note that section 552.101 does not encompass civil discovery privileges. *See* Open Records Decision No. 647 at 2 (1996). Accordingly, we conclude that the department may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with the Texas Rules of Civil Procedure.

We note, however, that a portion of the submitted information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." The exception in section 552.130 is based on privacy principles. Therefore, the requestor is entitled to his own driver's license and motor vehicle information. *See* Gov't Code § 552.023(b). However, the motor vehicle information we have marked must be withheld pursuant to section 552.130.

The remaining submitted information also contains an insurance policy number that is subject to section 552.136 of the Government Code. This section provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the department must withhold the policy number we have marked pursuant to section 552.136.

In summary, the department must withhold the information we marked pursuant to sections 552.130 and 552.136. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 219556

Enc. Submitted documents

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